

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KIMBERLY SMITH

Plaintiff,

vs.

GC SERVICES LIMITED PARTNERSHIP

Defendant.

Civil Action No. 4:11-CV-00929

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

KIMBERLY SMITH, (“Plaintiff”), through the undersigned counsel, ALEX SIMANOVSKY & ASSOCIATES, LLC, alleges the following against GC SERVICES LIMITED PARTNERSHIP, (“Defendant”):

INTRODUCTION

1. This is an action for actual and statutory damages brought by Plaintiff Kim Smith an individual consumer, against Defendants GC Services Limited Partnership, Inc., for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter “FDCPA”) and the Texas Debt Collection Practices Act, § 392 *et seq.* (hereinafter, “TDCPA”) which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the defendants transact business here and the conduct complained of occurred here.

PARTIES

3. Plaintiff, Kim Smith is a natural person residing in Houston, Texas.

4. Defendant, GC Services Limited Partnership is a limited partnership engaged in the business of collecting debt in this state with its principal place of business located at 6330 Gulfton, Houston, TX 77081. The principal purpose of Defendant is the collection of debts in this state and defendant regularly attempts to collect debts alleged to be due another.

5. Defendants are engaged in the collection of debts from consumers using the mail and telephone. Defendants regularly attempt to collect consumer debts alleged to be due to another. Defendants are “debt collectors” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

6. Upon information and belief, Defendant began placing collection calls to Plaintiff in November of 2010.

7. Plaintiff did not receive written notification from Defendant within five days of the initial communication that included the amount of the alleged debt that the Defendant was attempting to collect.

8. Defendant placed collection calls to Plaintiff seeking and demanding payment for an alleged consumer debt owed under an account number.

9. During collection calls, Defendant has threatened to garnish Plaintiff’s wages.

10. To date, Defendant has not taken definite action to garnish Plaintiff’s wages.

11. Upon information and belief, Defendant was given knowledge of Plaintiff’s work hours and that such calls both inconvenience Plaintiff and are prohibited by Plaintiff’s employer.

12. Upon information and belief, Defendant continued to call plaintiff at Plaintiff's workplace.

13. As a result of the acts alleged above, Plaintiff suffered emotional distress resulting in her feeling both stressed and ill.

CLAIM FOR RELIEF

14. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.

15. Defendants violated the FDCPA. Defendants' violations include, but are not limited to, the following:

(a) Defendant violated §1692e(4) of the FDCPA by giving the representation or implication that nonpayment of any debt will result in the garnishment of the wages of Plaintiff, without intending to take said action; and

(b) Defendant violated §1692g(a)(1) of the FDCPA by failing to send written notification to Plaintiff that is received within five days of the initial communication, with said notification including the amount of the alleged debt that the Defendant was attempting to collect; and

(c) Defendant violated §1692a(3) by calling Plaintiff's place of employment with knowledge or the reason to know that the consumer's employer prohibits the consumer from receiving such communication, without the prior consent of Plaintiff given directly to Defendant or the express permission of a court of competent jurisdiction;

16. As a result of the foregoing violations of the TDCPA, defendant is liable to the plaintiff Kim Smith for declaratory judgment that defendant's conduct violated the FDCPA, actual damages, statutory damages, and costs and attorney fees.

CLAIM FOR RELIEF

17. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.

18. Defendant violated TDCPA § 392. Defendant's violations of TDCPA § 392 include, but are not limited to the following:

- a) Defendant violated TDCPA § 392.302(4) by calling Plaintiff's telephone to ring at work repeatedly or continuously, or making repeated or continuous telephone calls to work, with the intent to harass a person at the called number.

19. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

20. As a result of the above violations of the TDCPA § 392, Defendant is liable to Plaintiff for injunctive and declaratory relief and for actual damages, statutory damages, and attorney fees and costs.

WHEREFORE, plaintiff respectfully requests that judgment be entered against Defendant GC Services Limited Partnership, Inc., for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA, and declaratory and injunctive relief for Defendant's violations of FDCPA § 392;
- B. Actual damages;
- C. Statutory damages pursuant to 15 U.S.C. § 1692k;
- D. Statutory damages pursuant to TDCPA § 392.
- E. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k and FDCPA § 392; and
- F. For such other and further relief as the Court may deem just and proper.

[ELECTRONIC SIGNATURE AFFIXED ON NEXT PAGE]

This 10th day of March, 2011.

ALEX SIMANOVSKY & ASSOCIATES, LLC

/s/ Dave Lilley

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